
By: **Senators Pinsky, Britt, Frosh, Grosfeld, and Kelley**
Introduced and read first time: January 31, 2003
Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax - Multistate Corporations - Allocation of Nonapportionable**
3 **Income**

4 FOR the purpose of providing that, to the extent allowed under the Constitution of
5 the United States, under certain circumstances certain income of certain
6 corporations that is not apportionable under the Constitution of the United
7 States shall be allocated to the State for income tax purposes; defining certain
8 terms; providing for the application of this Act; and generally relating to the
9 allocation to Maryland for income tax purposes of certain corporate income that
10 is not apportionable under the Constitution of the United States.

11 BY repealing and reenacting, with amendments,
12 Article - Tax - General
13 Section 10-402(c)
14 Annotated Code of Maryland
15 (1997 Replacement Volume and 2002 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article - Tax - General**

19 10-402.

20 (c) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE
21 MEANINGS INDICATED.

22 (II) "NONOPERATIONAL INCOME" MEANS ALL INCOME OTHER
23 THAN OPERATIONAL INCOME.

24 (III) "OPERATIONAL INCOME" MEANS ALL INCOME THAT IS
25 APPORTIONABLE UNDER THE CONSTITUTION OF THE UNITED STATES.

26 (2) (I) IF THE TRADE OR BUSINESS IS A UNITARY BUSINESS, THE PART
27 OF THE CORPORATION'S MARYLAND MODIFIED INCOME DERIVED FROM OR

1 REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE
2 SHALL BE DETERMINED BY ADDING:

3 1. THE CORPORATION'S NONOPERATIONAL INCOME THAT IS
4 ALLOCATED TO THE STATE UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH; AND

5 2. THE PART OF THE CORPORATION'S OPERATIONAL INCOME
6 DERIVED FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED
7 ON IN THE STATE AS DETERMINED UNDER PARAGRAPH (3) OR (4) OF THIS
8 SUBSECTION.

9 (II) TO THE EXTENT ALLOWED UNDER THE CONSTITUTION OF THE
10 UNITED STATES, IF THE PRINCIPAL PLACE FROM WHICH THE TRADE OR BUSINESS
11 OF A CORPORATION IS DIRECTED OR MANAGED IS IN THE STATE, ALL OF THE
12 CORPORATION'S MARYLAND MODIFIED INCOME THAT IS NONOPERATIONAL INCOME
13 SHALL BE ALLOCATED TO THE STATE.

14 [(1)] (3) Except as provided in paragraph [(2)] (4) of this subsection, if
15 the trade or business is a unitary business, the part of the corporation's Maryland
16 modified income THAT IS OPERATIONAL INCOME derived from or reasonably
17 attributable to trade or business carried on in the State shall be determined using a
18 3-factor apportionment fraction:

19 (i) the numerator of which is the sum of the property factor, the
20 payroll factor, and twice the sales factor; and

21 (ii) the denominator of which is 4.

22 [(2)] (4) (i) In this paragraph:

23 1. "manufacturing corporation" means a domestic or foreign
24 corporation which is primarily engaged in activities that, in accordance with the
25 North American Industrial Classification System (NAICS), United States Manual,
26 United States Office of Management and Budget, 1997 Edition, would be included in
27 Sector 11, 31, 32, or 33; and

28 2. "manufacturing corporation" does not include a refiner, as
29 defined in § 10-101 of the Business Regulation Article.

30 (ii) If a manufacturing corporation carries on its trade or business
31 in and out of the State and the trade or business is a unitary business, the part of the
32 corporation's Maryland modified income THAT IS OPERATIONAL INCOME derived
33 from or reasonably attributable to trade or business carried on in the State shall be
34 determined using a single sales factor apportionment formula, by multiplying its
35 Maryland modified income by 100% of the sales factor.

36 (iii) In filing its tax return for each year, a manufacturing
37 corporation shall certify that the NAICS Code reported on its Maryland return is
38 consistent with that reported to other government agencies.

1 (iv) If the Comptroller determines that a corporation has submitted
2 information that incorrectly classifies the corporation as a manufacturing corporation
3 under subparagraph (i) of this paragraph, the Comptroller shall reclassify the
4 corporation in an appropriate manner.

5 (v) The Comptroller, in consultation with the Department of
6 Business and Economic Development, shall adopt regulations necessary to carry out
7 the provisions of this subsection.

8 (vi) As part of its tax return for a taxable year beginning after
9 December 31, 2000 but before January 1, 2003, each manufacturing corporation that
10 has more than 25 employees and apportions its income under this paragraph shall
11 submit a report, in the form that the Comptroller requires by regulation, that
12 describes for each taxable year as of the last day of the taxable year the following:

13 1. the difference in tax owed as a result of using single sales
14 factor apportionment method under this paragraph as compared to the tax owed
15 using the 3-factor double weighted sales factor apportionment method in effect for
16 the last taxable year beginning on or before December 31, 2000;

17 2. volume of sales in the State and worldwide;

18 3. taxable income in the State and worldwide; and

19 4. book value of plant, land, and equipment in the State and
20 worldwide.

21 (vii) On or before October 1, 2003 and October 1, 2004, and
22 notwithstanding any confidentiality requirements, the Comptroller shall prepare and
23 submit to the Governor and, subject to § 2-1246 of the State Government Article, to
24 the General Assembly, a comprehensive report on the use of single sales factor
25 apportionment by manufacturing corporations that provides, at a minimum:

26 1. the number of corporations filing tax returns for the
27 taxable year that ended during the preceding calendar year that use single sales
28 factor apportionment and the number of such corporations having a Maryland income
29 tax liability for that taxable year;

30 2. the number of corporations paying less in Maryland
31 income tax for that taxable year as a result of using single sales factor apportionment
32 and the aggregate amount of Maryland income tax savings for all such corporations
33 for that taxable year as a result of using single sales factor apportionment; and

34 3. the number of corporations paying more in Maryland
35 income tax for the taxable year as a result of using single sales factor apportionment
36 and the aggregate amount of additional Maryland income tax owed by those
37 corporations for the taxable year as a result of using single sales factor
38 apportionment.

1 [(3)] (5) The property factor under paragraph [(1)] (3) of this subsection
2 shall include:

3 (i) rented and owned real property; and

4 (ii) tangible personal property located in the State and used in the
5 trade or business.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
7 effect July 1, 2003, and shall be applicable to all taxable years beginning after
8 December 31, 2002.